

ACROSS THE POND

GLOBAL REGULATORY UPDATE – 5 JUNE 2013

ASIA

Australia

- The Reserve Bank of Australia, the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) released a [joint statement](#) outlining the process by which they will decide whether a particular product must be cleared through a central counterparty.
- The APRA released a second [consultation package](#) outlining its proposed implementation of the Basel III liquidity reforms in Australia. The package addresses the main issues raised in submissions to APRA's previous discussion paper released in November 2011, and incorporates revisions to the Basel III reforms published by the Basel Committee in January 2013.

Hong Kong

- Hong Kong police are investigating suspected financial irregularities at the shuttered Hong Kong Mercantile Exchange Limited (HKMEx), which earlier this month notified the Securities and Futures Commission (SFC) that it had decided to surrender its authorization to provide automated trading services. HKMEx cited insufficient trading revenues as the primary reason behind its decision.
- Hong Kong Exchanges and Clearing (HKEx) announced that it is delaying mandated OTC derivatives clearing until January due to ongoing concerns about the extraterritorial impact of new cross-border derivative rules and the recognition of foreign CCPs. Nevertheless, voluntary clearing is scheduled to begin in June 2013.

Japan

- In a similar move, the JFSA announced that it is delaying its cross-border clearing rules. The main bone of contention relates to the Japanese mandate for local clearing of yen-denominated IRSs, which would prove problematic if the US and Europe do not recognise its domestic CCP.

Singapore

- The Monetary Authority of Singapore (MAS) announced that Deputy Prime Minister and Minister for Finance, Mr. Tharman Shanmugaratnam has been re-appointed as Chairman of the MAS Board of Directors until May 2015. Additionally, Mr. Ravi Menon, Managing Director of MAS, was re-appointed both as Managing Director of MAS and a member of the MAS Board of Directors for a further term of two years.

What is Asia Talking About?

Central clearing delay – Delays to the derivative clearing mandate in Hong Kong and Japan's cross-border clearing rules are the latest symptom of uncertainty surrounding the scope of new derivatives regimes being developed in the US and Europe. In particular, the absence of a framework providing for the mutual recognition of third-country CCPs in Asia remains an ongoing concern. In Europe, ESMA is expected to provide its third-country equivalence determinations for the US and Japan by mid-June (and for Hong Kong and other jurisdictions by mid-July) and the US SEC and CFTC continue to work to finalise their respective cross-border guidance.

EUROPE

Council of the EU & European Parliament

- **MiFID II/MiFIR:** Although EU Finance Ministers (ECOFIN) briefly discussed the file at their last meeting, no agreement looks likely in the near term. As a result, the Council negotiations will likely continue during the Lithuanian Presidency. The negotiations continue to focus

primarily on the issues of open access and waivers for pre-trade transparency. Though the Presidency has made some headway on the issue of access, pre-trade transparency remains a contentious issue between EU states. The final legislative text will likely be approved by early 2014, standards by ESMA to be prepared by late 2014 and implementation to start in H1 2016.

- **Cyber security:** EU lawmakers began discussing the draft Commission proposals on Cyber security strategy, known as the Network and Information Security Directive. Lead by conservative German MEP Schwab, the European Parliament's Internal Market Committee will be responsible for registering the Parliament's comments. Two other Parliamentary committees will also offer legislative opinions, namely the ITRE Committee, which is responsible for Industry and Research, as well as the LIBE Committee, which will address civil rights concerns. The Parliament is likely to focus on cyber resilience and cybercrime as the two most important elements of the strategy, with a particular emphasis on EU-US cooperation. The Council is likely to be divided amongst Member States with high cyber security standards that have implemented voluntary measures (e.g. Sweden, the UK, the Netherlands and Estonia) and those that have so far been less active in this area.

European Commission / European Securities Market Authority (ESMA) / European Central Bank

- Registration for European trade repositories (TRs) is likely to be delayed as the first TR(s) are not expected to be registered before August 2013. As a consequence, the EMIR reporting obligation for credit and interest rate derivatives is now expected in Q4 2013 with reporting for all other asset classes scheduled to start on 1 January 2014.
- The Commission issued a memo on the practical implementation of EMIR regarding non-EU CCPs clarifying that those currently providing services to EU clearing members must apply for recognition with ESMA by 15 September 2013. European CCPs have 6 months to register and the clearing obligation is likely to go live in mid-2014.
- The Commission launched a consultation on the European System of Financial Supervision (ESFS) with a deadline of 19 July. The ESFS, Europe's first legislative response to the 2008 financial crisis, consists of the three European Supervisory Authorities: the European Banking Authority (EBA), ESMA and the European Insurance and Occupational Pensions Authority (EIOPA). As per usual EU lawmaking practice, the rules and regulations governing the EU supervisory architecture are regularly reviewed and the Commission will present its draft legislative proposals in early 2014.

What is 'Brussels' talking about?

Towards an EU FTT: The EU States continue to negotiate the proposal, with an agreement appearing unlikely before Q4 2013 at the earliest. Interested parties continue to discuss the scope, rate and impact of the tax across the Union and abroad and are seeking to clarify the means for harmonising the collection mechanism under the proposal. There seems to be a consensus on the need to redesign the initial proposal by reducing the tax rate for shares and bonds to 0.01% and focusing on taxing the location of issuance, rather than residence. Opponents of the tax include the UK, Luxembourg, Malta and the Czech Republic as well as the broader financial industry. On top of the banking sector, corporate firms have voiced concerns over the impact of the proposed tax on growth and jobs while the ECB has raised concerns regarding the FTT's impact on macroeconomic policy and the financial stability of the EU. Representatives of the French and German central banks have also registered their concerns regarding the potential market damage caused by the proposed FTT.

Recovery and resolution framework for non-banks: The European Commission has published its Roadmap for the Framework for crisis management and resolution for financial institutions other than banks. The legislative draft framework is expected to be published in phases and the first proposal will focus on recovery and resolution of CCPs and is expected in the fall of 2013. The Commission highlighted that FMIs need a treatment different from banks and acknowledged that some FMIs are too big to fail/manage/bailout. The Commission is willing to follow the global rules and take into account the different risk profiles of different CCPs. MEP Swinburne will be drafting a non-legislative report for the European Parliament that is expected to be finalized by the end of 2013.

EU – US Free Trade Agreement: Negotiations between the EU and US on a potential free trade agreement are likely to commence in July 2013 and last for two years. The Parliament's Plenary voted overwhelmingly in favour of a negotiation while EU State leaders are expected to give the European Commission a mandate to start the negotiations with the US by mid-June 2013. It is still unclear to what extent financial services would be included in the bilateral talks, but some have suggested that the EU's equivalence framework in Europe's financial services legislation could be partially covered in the FTA negotiations. The Parliament has stressed that financial services must be included in the negotiations, with particular attention paid to regulatory equivalence, mutual recognition, convergence and extraterritoriality.

UNITED STATES

Commodity Futures Trading Commission (CFTC)

- The CFTC Technology Advisory Committee (TAC) held a meeting on 30 April regarding swap data reporting issues and the implementation of Dodd-Frank requirements. Discussion topics included an update on the implementation of an industry-led technology solution to protect customer funds; swap data repository (SDR) data issues from the perspective of market participants; SDR data issues from the

perspective of SDRs; and issues resulting from the recent Twitter Attack.

- On 16 May, the CFTC approved final rules in several key areas of swaps reform, including core principles and requirements for [swap execution facilities \(SEFs\)](#); “made available to trade” rule and “swaps block” rule; and final interpretive guidance and policy statement regarding [disruptive practices](#).

Department of Treasury

- On 25 April, the Financial Stability Oversight Council approved its [2013 annual report](#). In the report, the FSOC provided recommendations regarding reforms to address structural vulnerabilities, heightened risk management and supervisory attention and progress on financial reform.

Securities and Exchange Commission (SEC)

- The SEC voted unanimously on 1 May to [propose rules and interpretive guidance](#) for parties to cross-border security-based swap transactions. The proposal explains which regulatory requirements apply when a transaction occurs partially within and partially outside the U.S. and outlines a “substituted compliance” framework.

Congressional Activity

- On 7 May the House Financial Services Committee unanimously passed the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013 (H.R. 742) in a 52-0 recorded vote. DTCC General Counsel Larry Thompson outlined the unintended consequences of indemnification and reiterated support for the legislation in a [recent blog posting](#).
- The House Agriculture Committee held a hearing on 21 May to discuss the required reauthorization of the CFTC. The Food, Conservation, and Energy Act of 2008 (P.L. 110-246) reauthorized the CFTC through September 30, 2013.
- On 22 May the House Foreign Affairs Committee [unanimously passed](#) the Nuclear Iran Prevention Act (H.R. 850), which includes limiting Iran’s access to overseas foreign currency reserves and expanding the list of blacklisted sectors of the Iranian economy.

What is Washington Talking About?

Administration and Dodd-Frank: The Obama White House, in its second term, continues to push for a strict interpretation of Dodd-Frank, as evidenced by Treasury Secretary Lew’s urging of the House Financial Services Committee to reject Dodd-Frank corrections bills considered during the 7 May mark-up and his comments before the Senate Banking Committee that foreign countries are too critical regarding the application of new over-the-counter derivatives rules for cross-border trades.

Cyber Security: Last month, the House passed legislation related to cybersecurity: Cybersecurity Enhancement Act (H.R. 756); the Advancing America’s Networking and Information Technology Research and Development Act (H.R. 967); and the Federal Information Security Amendments Act (H.R. 1163). The final bill was the Cyber Intelligence Sharing and Protection Act (CISPA/H.R. 624) which has been controversial as evidenced by the veto threat that the White House issued for the second year in a row.